

AMENDED IN SENATE APRIL 18, 2005

**SENATE BILL**

**No. 346**

**Introduced by Senator Battin**

February 16, 2005

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An act to amend Section 530.5 of the Penal Code, relating to crime 300 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

SB 346, as amended, Battin. ~~Crimes:~~ Child identity theft.

*Existing law provides that a child who has been abused, neglected, or abandoned is within the jurisdiction of the juvenile court which may adjudge that child a dependent child of the court. Existing law requires social workers and other county employees to prepare reports and take specified action regarding a dependent child of the juvenile court.*

Existing law provides that every person who willfully obtains personal identifying information about another person, as defined, and uses that information for any unlawful purpose is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000, or both, or by imprisonment in the state prison, or a fine not to exceed \$10,000, or both.

~~This bill would specifically provide that this section applies to a parent who violates these provisions with respect to the personal identifying information of his or her child.~~ *provide that a child whose parent or legal guardian has used the personal identifying information of the child in violation of the criminal provision described above may be adjudged a dependent child of the juvenile court. By expanding the class of persons who come within the definition of a dependent child of the juvenile court, the bill would*

*impose new duties on social workers and other local employees, thereby imposing a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 530.5 of the Penal Code is amended to~~  
2     ~~read:~~  
3     SECTION 1. Section 300 of the Welfare and Institutions  
4     Code, as added by Section 3.5 of Chapter 824 of the Statutes of  
5     2000, is amended to read:  
6     300. Any child who comes within any of the following  
7     descriptions is within the jurisdiction of the juvenile court which  
8     may adjudge that person to be a dependent child of the court:  
9     (a) The child has suffered, or there is a substantial risk that the  
10    child will suffer, serious physical harm inflicted nonaccidentally  
11    upon the child by the child's parent or guardian. For the purposes  
12    of this subdivision, a court may find there is a substantial risk of  
13    serious future injury based on the manner in which a less serious  
14    injury was inflicted, a history of repeated inflictions of injuries  
15    on the child or the child's siblings, or a combination of these and  
16    other actions by the parent or guardian which indicate the child is  
17    at risk of serious physical harm. For purposes of this subdivision,  
18    "serious physical harm" does not include reasonable and  
19    age-appropriate spanking to the buttocks where there is no  
20    evidence of serious physical injury.  
21    (b) The child has suffered, or there is a substantial risk that the  
22    child will suffer, serious physical harm or illness, as a result of  
23    the failure or inability of his or her parent or guardian to  
24    adequately supervise or protect the child, or the willful or  
25    negligent failure of the child's parent or guardian to adequately

1 supervise or protect the child from the conduct of the custodian  
2 with whom the child has been left, or by the willful or negligent  
3 failure of the parent or guardian to provide the child with  
4 adequate food, clothing, shelter, or medical treatment, or by the  
5 inability of the parent or guardian to provide regular care for the  
6 child due to the parent's or guardian's mental illness,  
7 developmental disability, or substance abuse. No child shall be  
8 found to be a person described by this subdivision solely due to  
9 the lack of an emergency shelter for the family. Whenever it is  
10 alleged that a child comes within the jurisdiction of the court on  
11 the basis of the parent's or guardian's willful failure to provide  
12 adequate medical treatment or specific decision to provide  
13 spiritual treatment through prayer, the court shall give deference  
14 to the parent's or guardian's medical treatment, nontreatment, or  
15 spiritual treatment through prayer alone in accordance with the  
16 tenets and practices of a recognized church or religious  
17 denomination, by an accredited practitioner thereof, and shall not  
18 assume jurisdiction unless necessary to protect the child from  
19 suffering serious physical harm or illness. In making its  
20 determination, the court shall consider (1) the nature of the  
21 treatment proposed by the parent or guardian, (2) the risks to the  
22 child posed by the course of treatment or nontreatment proposed  
23 by the parent or guardian, (3) the risk, if any, of the course of  
24 treatment being proposed by the petitioning agency, and (4) the  
25 likely success of the courses of treatment or nontreatment  
26 proposed by the parent or guardian and agency. The child shall  
27 continue to be a dependent child pursuant to this subdivision only  
28 so long as is necessary to protect the child from risk of suffering  
29 serious physical harm or illness.

30 (c) The child is suffering serious emotional damage, or is at  
31 substantial risk of suffering serious emotional damage, evidenced  
32 by severe anxiety, depression, withdrawal, or untoward  
33 aggressive behavior toward self or others, as a result of the  
34 conduct of the parent or guardian or who has no parent or  
35 guardian capable of providing appropriate care. No child shall be  
36 found to be a person described by this subdivision if the willful  
37 failure of the parent or guardian to provide adequate mental  
38 health treatment is based on a sincerely held religious belief and  
39 if a less intrusive judicial intervention is available.

1 (d) The child has been sexually abused, or there is a  
2 substantial risk that the child will be sexually abused, as defined  
3 in Section 11165.1 of the Penal Code, by his or her parent or  
4 guardian or a member of his or her household, or the parent or  
5 guardian has failed to adequately protect the child from sexual  
6 abuse when the parent or guardian knew or reasonably should  
7 have known that the child was in danger of sexual abuse.

8 (e) The child is under the age of five and has suffered severe  
9 physical abuse by a parent, or by any person known by the  
10 parent, if the parent knew or reasonably should have known that  
11 the person was physically abusing the child. For the purposes of  
12 this subdivision, “severe physical abuse” means any of the  
13 following: any single act of abuse which causes physical trauma  
14 of sufficient severity that, if left untreated, would cause  
15 permanent physical disfigurement, permanent physical disability,  
16 or death; any single act of sexual abuse which causes significant  
17 bleeding, deep bruising, or significant external or internal  
18 swelling; or more than one act of physical abuse, each of which  
19 causes bleeding, deep bruising, significant external or internal  
20 swelling, bone fracture, or unconsciousness; or the willful,  
21 prolonged failure to provide adequate food. A child may not be  
22 removed from the physical custody of his or her parent or  
23 guardian on the basis of a finding of severe physical abuse unless  
24 the social worker has made an allegation of severe physical abuse  
25 pursuant to Section 332.

26 (f) The child’s parent or guardian caused the death of another  
27 child through abuse or neglect.

28 (g) The child has been left without any provision for support;  
29 the child’s parent has been incarcerated or institutionalized and  
30 cannot arrange for the care of the child; or a relative or other  
31 adult custodian with whom the child resides or has been left is  
32 unwilling or unable to provide care or support for the child, the  
33 whereabouts of the parent are unknown, and reasonable efforts to  
34 locate the parent have been unsuccessful.

35 (h) The child has been freed for adoption by one or both  
36 parents for 12 months by either relinquishment or termination of  
37 parental rights or an adoption petition has not been granted.

38 (i) The child has been subjected to an act or acts of cruelty by  
39 the parent or guardian or a member of his or her household, or  
40 the parent or guardian has failed to adequately protect the child

1 from an act or acts of cruelty when the parent or guardian knew  
2 or reasonably should have known that the child was in danger of  
3 being subjected to an act or acts of cruelty.

4 (j) *The child's parent or legal guardian has used the personal*  
5 *identifying information of the child in violation of Section 530.5*  
6 *of the Penal Code.*

7 (k) The child's sibling has been abused or neglected, as  
8 defined in subdivision (a), (b), (d), (e), or (i), and there is a  
9 substantial risk that the child will be abused or neglected, as  
10 defined in those subdivisions. The court shall consider the  
11 circumstances surrounding the abuse or neglect of the sibling, the  
12 age and gender of each child, the nature of the abuse or neglect  
13 of the sibling, the mental condition of the parent or guardian, and  
14 any other factors the court considers probative in determining  
15 whether there is a substantial risk to the child.

16 It is the intent of the Legislature that nothing in this section  
17 disrupt the family unnecessarily or intrude inappropriately into  
18 family life, prohibit the use of reasonable methods of parental  
19 discipline, or prescribe a particular method of parenting. Further,  
20 nothing in this section is intended to limit the offering of  
21 voluntary services to those families in need of assistance but who  
22 do not come within the descriptions of this section. To the extent  
23 that savings accrue to the state from child welfare services  
24 funding obtained as a result of the enactment of the act that  
25 enacted this section, those savings shall be used to promote  
26 services which support family maintenance and family  
27 reunification plans, such as client transportation, out-of-home  
28 respite care, parenting training, and the provision of temporary or  
29 emergency in-home caretakers and persons teaching and  
30 demonstrating homemaking skills. The Legislature further  
31 declares that a physical disability, such as blindness or deafness,  
32 is no bar to the raising of happy and well-adjusted children and  
33 that a court's determination pursuant to this section shall center  
34 upon whether a parent's disability prevents him or her from  
35 exercising care and control.

36 As used in this section, "guardian" means the legal guardian of  
37 the child.

38 *SEC. 2. If the Commission on State Mandates determines that*  
39 *this act contains costs mandated by the state, reimbursement to*  
40 *local agencies and school districts for those costs shall be made*

1 *pursuant to Part 7 (commencing with Section 17500) of Division*  
2 *4 of Title 2 of the Government Code.*

3 ~~530.5. (a) Every person who willfully obtains personal~~  
4 ~~identifying information, as defined in subdivision (b), of another~~  
5 ~~person, and uses that information for any unlawful purpose,~~  
6 ~~including to obtain, or attempt to obtain, credit, goods, services,~~  
7 ~~or medical information in the name of the other person without~~  
8 ~~the consent of that person, is guilty of a public offense, and upon~~  
9 ~~conviction therefor, shall be punished either by imprisonment in~~  
10 ~~a county jail not to exceed one year, a fine not to exceed one~~  
11 ~~thousand dollars (\$1,000), or both that imprisonment and fine, or~~  
12 ~~by imprisonment in the state prison, a fine not to exceed ten~~  
13 ~~thousand dollars (\$10,000), or both that imprisonment and fine.~~

14 ~~(b) “Personal identifying information,” as used in this section,~~  
15 ~~means the name, address, telephone number, health insurance~~  
16 ~~identification number, taxpayer identification number, school~~  
17 ~~identification number, state or federal driver’s license number, or~~  
18 ~~identification number, social security number, place of~~  
19 ~~employment, employee identification number, mother’s maiden~~  
20 ~~name, demand deposit account number, savings account number,~~  
21 ~~checking account number, PIN (personal identification number)~~  
22 ~~or password, alien registration number, government passport~~  
23 ~~number, date of birth, unique biometric data including~~  
24 ~~fingerprint, facial scan identifiers, voice print, retina or iris~~  
25 ~~image, or other unique physical representation, unique electronic~~  
26 ~~data including identification number, address, or routing code,~~  
27 ~~telecommunication identifying information or access device,~~  
28 ~~information contained in a birth or death certificate, or credit card~~  
29 ~~number of an individual person.~~

30 ~~(c) In any case in which a person willfully obtains personal~~  
31 ~~identifying information of another person, uses that information~~  
32 ~~to commit a crime in addition to a violation of subdivision (a),~~  
33 ~~and is convicted of that crime, the court records shall reflect that~~  
34 ~~the person whose identity was falsely used to commit the crime~~  
35 ~~did not commit the crime.~~

36 ~~(d) Every person who, with the intent to defraud, acquires,~~  
37 ~~transfers, or retains possession of the personal identifying~~  
38 ~~information, as defined in subdivision (b), of another person is~~  
39 ~~guilty of a public offense, and upon conviction therefor, shall be~~  
40 ~~punished by imprisonment in a county jail not to exceed one~~

1 year, or a fine not to exceed one thousand dollars (\$1,000), or by  
2 both that imprisonment and fine.  
3 (e) ~~Subdivision (a) shall apply to all persons including a parent~~  
4 ~~who willfully obtains personal identifying information, as~~  
5 ~~defined in subdivision (b), of his or her child, and uses that~~  
6 ~~information for any unlawful purpose, including to obtain, or~~  
7 ~~attempt to obtain, credit, goods, services, or medical information~~  
8 ~~in the name of the child without their consent.~~

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